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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Syllabi prepared by M. P. Burks, State Reporter.)

MCKENNEY v. PEERS, CLERK.—Decided at Wytheville, July —, 1895.

1. ELECTIONS—*Powers and duties of commissioners—returns—mandamus.* The powers and duties of commissioners of election, as prescribed by sections 133, 134, 135, 136 and 137 of the Code, are to ascertain the result from the face of the returns if regular, and if not regular to cause the irregularity to be corrected as required by the statute, and then to ascertain the result from the returns as corrected. When the result has been thus ascertained and signed by the requisite number of commissioners, and attested by the clerk, and had an abstract of the votes cast thereto annexed, the duties of the commissioners cease and determine when the returns required by the statute have been made, and the result ascertained in the manner prescribed by law, the commissioners cannot go behind the returns and throw out a precinct; and if they do, the clerk may be compelled, by *mandamus*, to award the certificate of election to the person previously ascertained to have been elected.

WARD'S ADM'R AND OTHERS v. CORNETT AND OTHERS.—Decided at Wytheville, July 11, 1895.

1. USURY—*Penalty—above legal rate after maturity.* A bond payable more than two years after date without interest till maturity, but with interest at eight *per cent. per annum* after maturity is not usurious on its face. The excess above the legal rate is regarded as a penalty and not as usury. A deed of trust to secure such bond, given after its maturity, and extending the time of payment thereof, is not usurious, but furnishes security for the bond and only legal interest thereon until paid.

2. USURY—*Quasi penal offense—proof to establish.* A debt to be usurious must be so in the beginning. It cannot be made so by subsequent events. Where the debtor, by punctual payment of the debt, may relieve himself of the illegal interest stipulated, it is not usury. Usury is a *quasi* penal offense, and, to avail as a defense, must be established beyond a reasonable doubt.

3. USURY—*Bill to discover—effect of answer.* Where the debtor calls on the creditor to answer under oath and discover usury, when responsive to the bill, must be accepted as true in the absence of other evidence sufficient to overcome such answer.

FISHBURN AND OTHERS v. ENGLEDOVE.—Decided at Wytheville, June 27, 1895.

1. JUDGMENTS—*Evidence.* In order that a judgment may be evidence against